

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

LEE ERIC OROZCO  
Plaintiff,

v.

WAL-MART STORES TEXAS, LLC  
Defendant

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CIVIL ACTION NO. 7:22-cv-00006

Jury Requested

**DEFENDANT'S NOTICE OF REMOVAL OF ACTION**  
**UNDER 28 U.S.C. §§ 1332 AND 1446(A)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW WAL-MART STORES TEXAS, LLC, Defendant in the above entitled and numbered cause, and files this Notice of Removal of the present cause from the 139<sup>th</sup> Judicial District Court of Hidalgo County, Texas, in which it is now pending, to the United States District Court for the Southern District of Texas, McAllen Division, showing the Court as follows:

**A. BACKGROUND**

1. This action is a civil personal injury lawsuit. This case was commenced by the filing of an Original Petition in Cause No. C-4760-21-C in the 139<sup>th</sup> Judicial District Court of Hidalgo County, Texas, on November 22, 2021. Pursuant to 28 USC §1446 (a), a copy of Plaintiff's Original Petition is attached hereto. *See attached Exhibit A*. No other process, pleadings or orders in this matter have been received by Defendant or its attorneys. Plaintiff alleges in his Original Petition that while shopping at the premises, he slipped and fell due to a wet mat on the floor. *Id.*, p. 2, ¶ 7.

2. Defendant was served with a copy of Plaintiff's Original Petition on December 6, 2021. A copy of the Citation served on Defendant, indicating the date of service, is attached hereto.

*See attached Exhibit B.* Defendant timely filed an Answer to Plaintiff's Original Petition on December 22, 2021. *See attached Exhibit C.*

## **B. BASIS FOR REMOVAL**

3. Plaintiff alleges in his Original Petition that he was at the time of filing of the Petition residing in Weslaco, Hidalgo County, Texas. *See Exhibit A*, p. 1, ¶ 3. Plaintiff still resides and is domiciled in Weslaco, Hidalgo County, Texas to the best of Defendant's knowledge. Accordingly, for diversity purposes, Plaintiff is a citizen of Texas.

4. Defendant Wal-Mart Stores Texas, LLC was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all of its members. *Harvey v. Grey Wolf Drilling, Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas, LLC.

5. Wal-Mart Real Estate Business Trust is a statutory business trust organized under the laws of the State of Delaware with its principal place of business in Arkansas. The citizenship of a statutory trust is the citizenship of its members, which includes its shareholders. *Americold Realty Tr. V. Conagra Foods, Inc.*, 136 S. Ct. 1012, 106 (2016); *Bynane v. Bank of New York Mellon for CWMBS, Inc. Asset-Backed Certificates Series 2006-24*, 866 F.3d 351, 358 (5th Cir. 2017); *U.S. Bank Tr., N.A. v. Dupre*, 615CV0558LEKTWD, 2016 WL 5107123, at \*4 (N.D.N.Y. Sept. 20, 2016) (finding that a Delaware statutory trust "seems precisely like the type [of trust] considered by the Supreme Court in *Americold*"). The sole unit/shareholder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co.

6. Wal-Mart Property Co. is an incorporated entity under the laws of the State of Delaware with its principal place of business in Arkansas. Therefore, Wal-Mart Property Co. is a citizen of Delaware and Arkansas. Wal-Mart Property Co. is also a wholly owned subsidiary of Wal-Mart Stores East, LP.

7. Wal-Mart Stores East, LP is a Delaware limited partnership. The citizenship of a limited partnership, for diversity jurisdiction purposes, is based on the citizenship of each of its partners. *Harvey*, 542 F.3d at 1079. WSE Management, LLC is the sole general partner of Wal-Mart Stores East, LP, and WSE Investment, LLC is the sole limited partner. The citizenship of each of these LLCs is determined by the citizenship of each of its members. *See Id.* at 1080. The sole member of WSE Management, LLC and of WSE Investment, LLC is Wal-Mart Stores East, LLC.

8. Wal-Mart Stores East, LLC is a limited liability company formed under the laws of the State of Arkansas and has its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all of its members. *Id.* The sole member of Wal-Mart Stores East, LLC is Walmart Inc.

9. Walmart Inc. is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Arkansas. A corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019)(quoting 28 U.S.C. § 1332(c)(1)). Walmart Inc. is therefore a citizen of both Delaware and Arkansas, but is not a citizen of Texas.

10. Accordingly, for diversity purposes, Defendant Wal-Mart Stores Texas, LLC is a citizen of Delaware and Arkansas, but is not a citizen of Texas.

11. Complete diversity therefore exists between the adverse parties to this action under 28 U.S.C. §1332(a).

12. Plaintiff sets forth a specific amount of damages sought in his Original Petition. Specifically, in Plaintiff's Original Petition paragraph 2, Plaintiff states "Plaintiff is seeking monetary relief from Defendant in an amount that is not more than \$250,000.00." *See Exhibit A, p. 1, ¶ 2*. Therefore, based on all information currently known or available to Defendant, Plaintiff's Original Petition admits that the amount in controversy exceeds the jurisdictional minimum for removal to this Court.

13. Upon filing of Defendant's Notice of Removal of this cause [*Document 1*], written notice of the filing by Defendant to Plaintiff was provided as required by law. Notice was also filed with the Clerk of the State Court in which this cause was originally filed. *Id.*

14. Based upon the foregoing, this Court has original jurisdiction for this matter pursuant to 28 U.S.C. § 1332, complete diversity of citizenship, and the matter is one which may be removed to this Court pursuant to 28 U.S.C. § 1446.

#### **C. REMOVAL IS TIMELY**

15. Defendant's Notice of Removal [*Document 1*] was timely filed in accordance with 28 U.S.C. §1446(b), in that it is filed within thirty (30) days of the service of Plaintiff's Original Petition on Defendant and within one year of the initial filing of the lawsuit. Defendant timely removed the case to the United States District Court for the Southern District of Texas, McAllen Division.

#### **D. JURY DEMAND**

16. Defendant hereby continues to request a trial by jury.

**E. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant Wal-Mart Stores Texas, LLC files this Notice of Removal and prays for removal of the above entitled and numbered cause from the 139<sup>th</sup> Judicial District Court of Hidalgo County, Texas, in which it is now pending, to the United States District Court for the Southern District of Texas, San Antonio Division, based on diversity of citizenship of the Parties.

Respectfully submitted,

COLVIN, SAENZ, RODRIGUEZ & KENNAMER, L.L.P.

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**ATTORNEYS FOR DEFENDANT  
WAL-MART STORES TEXAS, LLC**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document has been served on this 5<sup>th</sup> day of January, 2022 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule 5.1(d).

/s/ Jaime A. Saenz

Jaime A. Saenz